

## § 3.8

## 12 CFR Ch. I (1–1–10 Edition)

### § 3.8 Reservation of authority.

When, in the opinion of the Office the circumstances so require, a bank may be authorized to have less than the minimum capital ratios in § 3.6 during a time period specified by the Office.

### Subpart C—Establishment of Minimum Capital Ratios for an Individual Bank

#### § 3.9 Purpose and scope.

The rules and procedures specified in this subpart are applicable to a proceeding to establish required minimum capital ratios that would otherwise be applicable to a bank under § 3.6. The OCC is authorized under 12 U.S.C. 3907 (a)(2) to establish such minimum capital requirements for a bank as the OCC, in its discretion, deems appropriate in light of the particular circumstances at that bank. Proceedings under this subpart also may be initiated to require a bank having capital ratios above those set forth in § 3.6, or other legal authority to continue to maintain those higher ratios.

[55 FR 38800, Sept. 21, 1990]

#### § 3.10 Applicability.

The OCC may require higher minimum capital ratios for an individual bank in view of its circumstances. For example, higher capital ratios may be appropriate for:

- (a) A newly chartered bank;
- (b) A bank receiving special supervisory attention;
- (c) A bank that has, or is expected to have, losses resulting in capital inadequacy;
- (d) A bank with significant exposure due to the risks from concentrations of credit, certain risks arising from non-traditional activities, or management's overall inability to monitor and control financial and operating risks presented by concentrations of credit and nontraditional activities;
- (e) A bank with significant exposure to declines in the economic value of its capital due to changes in interest rates;
- (f) A bank with significant exposure due to fiduciary or operational risk;
- (g) A bank exposed to a high degree of asset depreciation, or a low level of

liquid assets in relation to short term liabilities;

(h) A bank exposed to a high volume or, or particularly severe, problem loans;

(i) A bank that is growing rapidly, either internally or through acquisitions; or

(j) A bank that may be adversely affected by the activities or condition of its holding company, affiliate(s), or other persons or institutions including chain banking organizations, with which it has significant business relationships.

[60 FR 39493, Aug. 2, 1995]

#### § 3.11 Standards for determination of appropriate individual minimum capital ratios.

The appropriate minimum capital ratios for an individual bank cannot be determined solely through the application of a rigid mathematical formula or wholly objective criteria. The decision is necessarily based in part on subjective judgment grounded in agency expertise. The factors to be considered in the determination will vary in each case and may include, for example:

- (a) The conditions or circumstances leading to the Office's determination that higher minimum capital ratios are appropriate or necessary for the bank;
- (b) The exigency of those circumstances or potential problems;
- (c) The overall condition, management strength, and future prospects of the bank and, if applicable, its holding company and/or affiliate(s);
- (d) The bank's liquidity, capital, risk asset and other ratios compared to the ratios of its peer group; and
- (e) The views of the bank's directors and senior management.

#### § 3.12 Procedures.

(a) *Notice.* When the OCC determines that minimum capital ratios above those set forth in § 3.6 or other legal authority are necessary or appropriate for a particular bank, the OCC will notify the bank in writing of the proposed minimum capital ratios and the date by which they should be reached (if applicable) and will provide an explanation of why the ratios proposed are considered necessary or appropriate for the bank.